the learned counsel himself—sentiments which he would freely express in social life, and which nothing but his position as counsel could lead him even to seem to doubt. That brother said, in the case of Windt vs. The German Reformed Church, (4 Sandford's Chancery Reports, 476):—

"It is painful and deeply abhorrent to the sensibilities of our nature to have the remains of our beloved friends and relatives disturbed in their last homes, and removed by rade and careless hands to a distant cemetery, not hallowed by any of the associations which encircle the consecrated ground where we have deposited them, in sadness and in sorrow. I confess that I have not become so much of a philosopher as to regard the bodies of deceased friends as nothing more nor better than the clods of the valley; and that my sympathies were strongly enisted in behalf of these complainants vindicating the repose of the bones of their kindred."

These are the noble sentiments to which every heart in this assembly responds, and none more cordially, I am sure, than that of my learned opponent. As an advocate, he may be earnest in the defence of his client; but, believe me, sir, as a man, for I know him well, you cannot find one impelled by more generous sentiments.

Perhaps nothing more need be said by me, by

him well, you cannot find one impelled by more generous sentiments.

Perhaps nothing more need be said by me, by way of reply to what has dropped from the learned counsel. He has made a great many remarks foreign to the discussion before your committee to which no reply is demanded; such, for instance, as that one of the assistant rectors of Trinity Church, at the commencement of the Revolutionary war, and only three months and twenty-seven days after the Declaration of Independence, was opposed to Washington. The letter of this assistant rector, to which the counsel referred, was written one month and seven

claration of Independence, was opposed to Washington. The letter of this assistant rector, to which the counsel referred, was written one month and seven days after Trinity Church was burnt, and it was not rebuilt until after the close of the war.

The church was burnt on the twenty-first of September, 1776, and of course no services were performed there after that time by the Rev. Mr. Inglis, and it is difficult to perceive how he could in any manner have exerted an influence over its affairs. The learned counsel might as well now attempt to prove that Washington himself, only a few months before, was a kingsman and zealously supported the crown—and from thence infer that he never commanded the revolutionary forces. If the counsel, in the course of his researches, had looked into the fourth volume of the Documentary History, (p. 1,977.) he would have discovered that, at the earliest practicable moment, the church was placed in the hands of a whig vestry. But it is objected that this is a tory church. It is a grave argument, put forward with all carnestness, that the street should be opened, because, says the counsel, the political sentiments of the church were adverse to those of Washington. Although I am unable to perceive the logical sequence of the argument, let us for a moment pause to examine the fact. I cannot find that Trinity Church was in any other sense a tory church than was every other church, in the city of New York, during the war of the Revolution. The Presbyterian Church, Dutch Church, Methodist Church, Baptist Church, were each and every one of them just as much tory churches, for anght that I can see in the page of history, as was Trinity. When the city was occupied by the British all the churches were, very probably, under the control of the royalists who remained in the city, and it is fair to presume that a large portion of the inhabitants, who remained in the city, and it is fair to presume that a large portion of the inhabitants, who remained in the city and it is fair to the hands of th

It was a time of civil war. The contest raged

It was a time of civil war. The contest raged fercely. Families were divided; churches were divided; brother fought against brother, father against son; and the divisions on questions of politics depended in no respect, that I can perceive, upon the phase of sect.

I find among the names of the vestry, from 1772 to 1777, that of the Honorable James Duane, and he was a warden from 1784 to 1794. Mr. Duane was a member of our Continental Congress, and a consistent adherent to the cause of America. Robert R. Livingston, an undoubted whig, was a vestryman from 1764 to 1775, and a warden from 1784 to 1785.

Mr. James Desbrosses was a vestryman from 1774 to 1779, and a warden from 1774 to 1779, and a com-Bohalek, LL. D., an eminent lawyer and accom-Schaick, Lt. D., an eminent lawyer and accomplished scholar, was a vestryman from 1776 to 1779, and in 1780. William Laight was a vestryman from 1777 to 1784, and from 1788 to 1802. Robert Watts from 1778 to 1783, and a warden in 1783, and from

In have referred to the biography of General Lamb merely to prove that officers of the Revolution have been buried in Trinity Church-yard: that many such were buried there during the war is proved by tradition, as well as the other evidence before your committee; and a tradition so generally believed in by the people would of itself be sufficient to establish any historical fact. But if it were admitted that no such officers or soldiers were interred there during the war, it is beyond all controversy that many such were buried there after the close of the struggle. This is not denied, and is undeniable.

But the counsel suggests that there is no tomb-stone bearing an inscription showing that the remains of Revolutionary soldiers were interred there. Where is the marble slab that marks the last resting place of Sir John Moore? Who is there living that can point out the place where Leonidas and the Spartan band who fell at Thermonylæ were spultured? What living witness can state that he saw the battle of Pharsalia, and can designate the tombs of the Roman republican soldiers who fell there? By the same course of argument which the counsel pursued, it might be proved that the great battles of antiquity were never fought. It would be difficult to prove by such a standard of evidence that George Washington ever lived; that the artillery of the revolution itself ever fashed upon the midnight of despotism, and harbingered the dawn of liberty; that Wasterloo ever trembled beneath the tread of British legions, or resounded with the thander of Napoleon's cannon. Indeed, the argument would go much further, and prove the non-existence of everything but the present. All the records of the past are but traditions; history itself is but written tradition—and shall we therefore deny its teaching; the underly about here to develop the country were also have the spot where the old veteras' deathless acts were displayed, is a cogent argument against distarbing their premains—remains which consecrate every inch of ground where the

* See petition A at the end of the argument. † See note B at the end of the argument. ; See note C at the end of the argument.

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would she not have accepted \$62,000 in 1834, to allow that to be taken which is of no possible pecuniary value to her, and which in effect belongs to the relatives and friends of those who are interred in her vaults. This one fact is a sufficient refutation of all the calumnies uttered against her. She opposes her own pecuniary interests. She refuses a large sum of money, and still proves faithful to her trust. For it is plain enough that if, in 1834, the property of Trinity Church was assessed at \$62,000, it would now, owing to the immense appreciation of lots in that neighborhood, be estimated at \$200,000 at the least. And think you, Mr. Chairman, that the property-holders in that neighborhood would be willing to pay such a sum for opening this street? If they objected to the payment of \$62,000 in 1834, as too onevous then, think you that they will deem \$200,000 now any less burdensome? Sir, the property-holders will be among the most zealous opponents of the measure, and the expensive proceedings to open this street must ultimately be discontinued, and the costs incurred charged to the city, under the auspices of the reform administration.

In the second place, the application is opposed by such men as the Hon F. R. Tillou, your Recorder—the noble, public spirited, patriotic reformer, Tillou; ever in the van of whatever movement for the public good—and of such men as Capt. Tillou, General Haight, Mr. Townsend, and many others who have friends and relatives buried there. The Recorder has twenty-two relatives who are buried in the line of the proposed street. These men oppose it on the ground that it would be an unnecessary and ruthless desceration of the dead.

Again, it would cost, according to the estimates made, nearly \$100,000 to disinter and remove the bodies buried there. This, too, whatever it be, must

Again, it would cost, according to the estimates made, nearly \$100,000 to disinter and remove the bodies buried there. This, too, whatever it be, must be added to the assessment to be paid by the property holders or by the city. Will they thank you for such an additional burden?

Having said thus much negatively by way of a reply to the argument of the learned counsel for the applicants, for the opening of the street, and of the persons who ask for, and those who oppose the measure, permit me now to say a few words by way of affirmative argument against that measure.

And now, Mr. Chairman, I propose, in my own humble way, to offer some suggestions, to show—

First, That the proposed opening of Albany street would be an act in derogation of the grant made by the city of New York to Trinity Church in 1703, and that it would be a repudiation of a solemn compact between the city as grantor and the church as grantee.

Second That it is not demonded by wable recessity.

rantee. Second. That it is not demanded by public necessity

pact between the city as grantor and the church as grantee.

Second. That it is not demanded by public necessity. Third, I shall endeavor to show that it would be a violation of the policy of the law to open this street. Fourth, I shall, in conclusion, urge that Christianity is a part of the law of the land, and that it would be a violation of the precepts and spirit of Christianity thus to scatter to the four winds of heaven the askes of the dead.

Nor shall I offer any apology for presenting such considerations to gentlemen selected, as you have so recently been, from the body of your fellow citizens, to occupy the high and honorable positions you now hold—selected because of your known probity and true moral worth in the community. Why are we not discussing the question before the Board of Aldermen of 1853? Is it not because the spirit of the honest masses was aroused during the recent election in this city, and because that spirit demanded that honorable men should be selected to fill the places you now hold, in the stead of those in whom they could no longer place confidence. You are not at all embarrassed by the action of the Board of Aldermen, whose places you now fill; any act of theirs, instead of furnishing evidence of the right in this community, is the rather regarded as eogent evidence of the contrary. To prove that any act of theirs was right, requires an argument; to show that it was wrong, but the suggestion that they were its anthors. I speak, of course, of the majority of the late Common Council. There were men, in both Boards, of great moral worth—men as highly esteemed as any others in the city, and who have passed through that ordeal unscathed. But it is needless to promounce their praises. Their worth has been appreciated by the unerring instincts of their constituents, and they have already assumed important and influential positions in the newly organized government. As well might it be urged that the resolutions of the late Common Council in favor of a Broadway railrond, and their resol

in the resolutions before you possess any binding

Gentlemen, your predecessors, in the full tide of their power, derided all control, threw off all restraint, seized upon things sacred as well as things secular, and at last, as a fitting termination of their ever-memorable labors, like the proud prince of Babylon, they seized upon things sacred as well as things secular, and at last, as a fitting termination of their ever-memorable labors, like the proud prince of Babylon, they seized upon the property of t

would have been forefield. In consequence of the the facility for making interments there, and the low rates to be paid for such interments, it became the common and most usual place of burial, and so continued down to 1823, when the ordinance of this city was passed forbidding further burials. It is generally estimated that from thirty to forty thousand persons have been interred there. I know that the estimate is disputed by the applicants for this measure; but, so long as I can vouch for my statement, the report of the committee of the Board of Aldermen, made in 1847, and the other evidence before your committee, I may well assume the accuracy of the statement, without stopping to prove it. Now let us revert for a moment to the grant. The grant of the city to the church expresses substantially that the ground shall be held by the church in fee simple forever, as a general burying ground. In derogation of that grant, the same city now seeks to seize the property which it once solemnly granted, and appropriate it to the aid of a private speculation; or, if you please, for the sake of the argument, for the purpose of opening an unnecessary street. In other words, it is proposed to this city to repudiate the grant so solemnly made, and to treat it as though its corporate faith were not irrevocably pledged to the literal fulfilment of all the terms of that grant. To illustrate: Suppose, Mr. Chairman, a gentleman were to convey to you a piece of ground, upon trust that you should hold it for the benefit of the living poor, and apply its proceeds to their support, and afterwards the grantor should himself seek to evade the grant. Would not all the world deem the act dishonorable, and excerate his memory? But that is just what it is now proposed to the conjoration of New York to do in this matter; the only difference being that the corporation created a trust for the benefit of their dend, the trust in the case supposed being for the benefit of the living. Shall such as near the submant of the shall we be so illustr

selieve me, sir,
"It is an impious greatness,
And mixed with tee much horror to be be envied." And mixed with too much horror to be be envied."

II. But, sir, I deny that the interests of commerce demand it. The public does not demand it. You are called upon by a new private individuals only. What great public interest demands it? Do the merchants demand it? No sir; they ask not for it. Do the carmen ask for it? The grade of Thames and Rector street—and the grade of Albany street would be the same—is so steep as to unfit them for their use, and they ask it not. Our carmen are men who would scorn to travel over the bones of the sacred dead; and if this street were made, they would avoid it as a plague-spot.

it as a plague spot.

Do the people demand it? No, sir. No. A thousand times no! They do not ask a new street within for-

ty feet of another street. And Albamy street, if opened, would be within forty feet of Thamesstreet, Try this question of still by a mother standard. Suppose the ground proposed to be taken for this street belonged to any private citizen, Mr. Boorman for example, and that it had no graveyard upon it Would any one then think the public interests could be subserved by taking it for the street? Then, of would any one the think the public interests could be subserved by taking it for the street? Then, of would any one, in such a case, venture to suggest that the public would be so much benefitted as to warrant the payment of such a sum of money? No, sir. It would then be seen that the opening of the street could not benefit the public, and the price to be paid would be for great to forward the interest of the lot specialison. For the lots, upon the ground that it would be taking his private property for private uses, and the scheme would be frustrated.

The plain truth of the matter is simply this: The persons who claim to open the street think, what their counsel expresses, that they can take this churchyard for nothing; that it will be a very handsome speculation. It will open an avenue to their lots; give the lots desirable fronts to make them saleable; and that this great object can be accomplished for just nothing. The speculation is certain; the loss, they think, cannot be a penny. Did they not know, when they purchased church deceived them by closing an avenue to their property? That is not pretended; all they ask is, intat the church will give away its lands; or, rather, they modestly ask, that you should forcibly confiscate the grounds of this church—that loss, which have been purchased at lown prices, may, in Mr. Is otherwise the suppose of the property of the world, for a day, is contained in each supervised to the people, and nine-tenths of the whole population would vote against it. This, of itself, is sufficient to show that the public interests do not demand it. I am one of those who believe that the

270.)

III. It would be a violation of the policy of the lil. It would be a violation of the policy of the lil. (See Beatty v. Kerrs, 2 law to open the street. (See Beatty v. Kerrs, 2 Peters' Rep. 566, 7 Term Rep. 723.) In the case of Hunter agt. the Trustees of Sandy Hill, reported in the 6th vol. Hill's Reports, p. 407, Judge Beardsley

"Dedication, as the term is used in reference to this subject, is the act of devoting or giving property for some proper object, and in such manner as to conclude the owner. The law which governs such cases is anomalous. Under it rights are parted with and acquired in modes and by means unusual and peculiar. Ordinarily, some conveyance or written instrument is required to transmit a right to real property, but the law applicable to dedication is different. A dedication may be made without writing, by act in fair sa well as by deed. It is not at all necessary that the owner should part with the title which he has; for dedication has respect to the possession, and not to the permanent estate. Its effect is not to deprive a party of title to his lands, but to estop him, while the dedication continues in force, from asserting that right of exclusive possession and enjoyment which the owner of property ordinarily has. (Cincinnati against Lessee of White, 6 Pet. Rep. 431, 438.) The principle upon which the estoppel rests is that it would be dishonest, immoral or indecent, and, in some instance even sacriligious, to reclaim at pleasure property which has been solemnly devoted to the use of the public, or in furtherance of some charitable or pious object. The law, therefore, will not permit any one thus to break his own plighted faith to disappoint honest expectations thus excited, and upon which reliance has been placed. The principle is one of sound morals and of most obvious equity, and is, in the strictest sense, a part of the law of the land. It is known a all courts, and may as well be enforced at law as a equity.

"The land in question was dedicated as a gravesaid:—
"Dedication, as the term is used in reference to

als and of most obvious equity, and is, in the strictest sense, a part of the law of the land. It is known all courts, and may as well be enforced at law as a cquity.

"The land in question was dedicated as a graveyard, and the ashes of the dead shall be allowed to repose in undisturbed solitude and quiet. The grave is hallowed. This sentiment is deeply seated in the human heart, and is all but universal. It exsts with scarcely less intensity of strength in the breast of the savage than in that of the civilized man, repelling any rude approach to the resting place of the dead, and forbidding, as sacriligious, its use for any of the secular and common purposes of life. A just deference to this sentiment, and a proper respect for the feelings of those whose friends have been buried in the ground now in contest, are wholly incompatible with the right to exclusive possession set up by the plaintiff."

This is the language of one of the ablest jurists of this State. Nothing that I could say would add to its force. Why, does it not emphatically apply to this ground? Has it not been solemnly dedicated and devoted "to the use of the public?" Will the law, therefore, permit any one to break the plighted faith of the city, and disappoint the honest expectations excited by this pledge of that faith, upon which it has been "used for this pious object"—and should not "the ashes of the dead be allowed to repose in undisturbed solitude and quiet?" Turn for a moment from this language of the courts to the expressions of the Legislature. What does our statute may in regard to the removal of dead bodies from their graves? (2 R.S. 683, sec. 13:) "Every person who shall remove the dead body of any human being from the grave or other place of interment, for the purpose of selling the same, or for the purpose of dissection, or from mere wantonness, shall, upon conviction, be panished by imprisonment in a State prison not exceeding five years, or in a county jall not exceeding one year, or by a fine not exceeding five hundred dellars

clared upon the offender. Think you the law would have been thus strict if the lawgiver had not been persuaded of a deep-seated conviction that the act denounced was abhorent to the universal sentiment of mankind? He who, "from mere wantonness," removes the dead, is declared by the laws to be a criminal. This application to open Albany street I cannot view in any other light that an attempt to disinter the dead from "mere wantonness," or a wome motive, the desire of gain.

Who is it that asks for the opening of Albany street: and for what object? James Boorman, a ries English gentleman, asks that it may be opened, that his property may thereby appreciate in value. In his communication to the Journal of Commerce, Mr. Boorman concedes that "it is undoubtedly true" that his property will be materially enhanced in value by opening the proposed street. His counsel here informs us that, if opened, he shall contend that Trinity Church will be entitled to no assessment for the land, because, says the connect, the ground is dedicated to the purpose of a cemetery; and on the authority of the Albany street case, in the eleventh volume of Wendell's Reports, page 150, he believes this church would not be entitled to a cent of the assessment. Mark this bold project, then, displayed in its true colors. Mr. James Boorman asks for the graves of our fathers that his land may may rendered more valuable, and he asks that the land of the church may be taken for nothing, that he may be made all the richer. No gentleman occupying Mr. Boorman's position in this matter has a right to assail; the motives of Trinity Church, as he certainly has done, directly and indirectly, in his own person and by his representatives.

Try the motives of that body by a very simple standard:—

Trinity Church, in 1834, was offered sixty-two thousand dollars for the ground proposed to be taken, to which the church has a merely legal title, as custodian for the sacred dead interred in her vanits. Now, if the church were so wicked, one would suppose that the

now is, the law of this beast, the desceration of the in our courts.

That Christianity forbids the desceration of the dead requires no argument. Ever since the introduction of Christianity the remains of the dead have been held sacred. The advent of religion marked an entire revolution in the mode of disposing of the dead.

duction of Christianity the remains of the dead have been held sacred. The advent of religion marked an entire revolution in the mode of disposing of the dead.

The Romans kindled the funeral pyre under the remains of deceased friends, but when Paul preached to them, in thrilling tones, the resurection of the body and the life everlasting, the converts to the new faith were carefully placed in the Tufa, in subterraneous caverns, where the solemn rites of sepulture were performed by the primitive Christians over their martyred brethren in days of persecution and of danger. These caverns still remain, as the catacombs near Rome bear witness. The elaborately wrought sarcophigi, the proud mausoleums, which meet the eye of the beholder on every hand in the Old World, all bear silent evidence of the universality of this sentiment. In a word, he who can exclaim, "I know that my Redeemer liveth, and that he shall stand at the latter day upon the earth: aad though, after my skin, worms destroy this body, yet in my flesh shall I see God,"—he who believes this momentous truth must respect the remains of the dead. But this branch of the subject more appropriately belongs to the pulpit than the forum. Permit me, therefore, to dismiss it with the remark, that the eloquent sermon of the learned divine, Mr. Weston, has developed all that is necessary to be said on that subject, in its true light. His very text is sufficient without a sermon, and is peculiarly apposite to the present occasion. Abraham, the venerable patriarch, purchased land from the children of Heth for a perpetual burying place. It received the mortal remains of his wife not only, but of Abraham, Isanc, Jacob and Joseph. The children of Heth were true to their grant, observed it faithfully, and to this day the burial place is kept sacred. Our forefathers have also purchased a perpetual burying place n Trinity churchyard, and it is now songlet to be aken from us, not by one of ourselves, but by a stranger. One, to whom all the glorious associations of our land every consideration of public utility, let that one green spot remain. Let old Trinity stand intact, and teach the sublime truths of our holy religion to the two hundred thousand inhabitants within its precincts; and may the daily sermons preached there be continued, and may her dead repose in peace beneath the shadows of her lofty spire, till the mighty archangel shall come down from heaven, and shall open the books, and shall set his right foot upon the sea, and his left foot upon the land, and swear, by Him that liveth forever and ever, that time shall be no longer. no longer.

[NOTE A.] HISTORY OF TRINITY CHURCH, IN A PETITION PROM

INOTE A.]

HISTORY OF TRINITY CHURCH, IN A PETITION FROM A DESCENDANT OF A REVOLUTIONARY OFFICER. To the Honorable the Common Council of the City of New York:—

The undersigned respectfully joins in the prayer of many of his fellow-citizens to your honorable body, asking for the repeal of the ordinance of the late Common Council, relative to the extension of Albany street through Trinity churchyard.

In support of his petition, the undersigned begs leave to present the following facts connected with our Revolutionary history.

Among the earliest of the patriotic spirits who marched from their homes to defend the city of New York against the armies of Great Britain in 1776, were the regiments contributed by the counties of York and Lancaster, in Pennsylvania. They were composed almost entirely of young men, the majority of them of German descent, and animated by the hatred of oppression, and enthusiasm in the cause of freedom, which distinguishes their race at the present day.

Five regiments marched from the county of York to New Jersey in July, 1776, and of these two were detached to form part of the "flying camp"—a corps of 10,000 men, voted by Congress on June 3, 1776. These two regiments were stationed in the vicinity of the city of New York. A portion of them were killed or taken prisoners at the battle of Brooklyn Heights, and the balance either fell on the field of battle at the taking of Fort Washington on that disastrous occasion, and marched down to the city. Here they, in common with thousands of their fellow patriots, suffered severely at Fort Washington on the 16th of November, 1776, or were captured on the 16th of November, 1876, or were captured on the 16th of November, 1876, or were captured on the field, or by wounds, or from the horrors of the prisons, left but few to return to the green hills of the Codorns.

The regiment of Col. Michael Swope, consisting of cight companies, suffered severely at Fort Washington with a musket ball in each leg. Being carried to the city prisons with the survivo

city by the British army, and the burial ground was unprotected.

A successful effort was therefore made to obtain a place of sepulture in Trinity Churchyard. Adjutant Barnitz was attached to Captain Christian Stake's company, of Swope's regiment, composed of young men of the best families of the town of York. To these more particularly, as being his more immediate compades, such care as he could afford was given.

Of this company, the following were buried in the northwestern portion of the grounds, at that time bordering on the water viz.:—Sergeant Peter Haak, Sergeant John Rinks, privates Hugh Dobbins, Henry Hoff, David Parker, and probably one or two others. Captain McCarter (of Col. Richard McMaster's regiment, from the same county) died of wounds